

CLASS DISTINCTIONS IN EIGHTH CENTURY ITALY*

I

ITALY in the eighth century was dominated by the Lombards, whose kingdom centered in the Po Valley around their capital city of Pavia. But although the Lombards in the eighth century were the most important single political element in the peninsula, they were never the only power. The Eastern Roman or Byzantine Empire continued to control a small area around the old Roman city of Ravenna, and in addition, the Byzantines continued to control small amounts of territory in the extreme southern part of Italy. These Byzantine territories were a holdover from the Italian conquests made under the East Roman Emperor Justinian in the middle of the sixth century. In the center of the Italian peninsula and to a certain extent threatening to cut the Lombard power in two, was the territory which was under the nominal control of a shadowy official called the Duke of Rome but which was for all practical purposes under the control of the Bishop of Rome, an individual anxious to increase his power and the prestige of his see.

In discussing class distinctions in eighth century Italy, we shall here be concerned primarily with the dominant people of this period, the Lombards, although in discussing the various classes of society among this people it will be necessary to note from time to time the relative position of other non-Lombard persons in the peninsula.

The Lombards were a tribe of Germanic barbarians who

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had entered the Italian peninsula in the year 568.¹ Perhaps originally they had lived in the northern part of Europe just south of the North Sea in the region around the mouth of the Elbe River, but for about a century before entering Italy, they had lived in what was once the old Roman province of Noricum, which is now part of modern Austria. This territory had once been a part of the Roman Empire, but by the time the Lombards appeared there Roman control had long since disappeared, and apparently no vestiges of Roman political organization remained. Instead the district was contested by a number of the barbarian peoples, the Lombards having to assert their warlike nature before making good their claim to the territory. We have no contemporary records which mention the Lombards during the existence of this pre-Italian Lombard "state." Their own tradition, as later recorded by their native historian, Paul the Deacon, held that during this period the Lombards were ruled over by kings. If this tradition is correct, it seems likely that there must have been some political organization of at least a rudimentary sort among the Lombards during this period.

Evidently it was while they lived in Noricum that the Lombards first came into contact with some ideas which were essentially Roman. Their possible sources of contact with such Roman ideas were three. In the first place, there was some slight possibility that traces of Roman organization or culture survived from the period of Roman control into the period when the Lombards arrived in Noricum. In the second place, the Byzantine Empire had valuable trade contacts with the various barbarian peoples living in the eastern and central part of Europe. Ideas often pass easily along the trade routes, and in this way the Lombard kings could readily have heard of the Eastern Roman Emperor and have come to understand a little about his position in

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the eastern Mediterranean. Furthermore, with Byzantine trade was bound also to come Byzantine notions regarding contractual arrangements and sales, and in this way the Lombards previous to their arrival in Italy might well have been considerably influenced by some of the concepts of Roman Law, especially those dealing with contractual proceedings. In addition, there was a third possible source of Roman influence. While living in Noricum the Lombards were converted to the Arian form of Christianity. The Church with its ecclesiastical organization, though rudimentary, was bound to bring a number of Roman influences.

In spite of these possible sources of Roman influence, the Lombards were still a relatively backward and barbarian people when they invaded Italy in 568, tempted there by the political anarchy which existed after the overthrow of the Ostrogothic kingdom by the temporarily revived Byzantine Empire under Justinian. Perhaps the relative backwardness of the Lombards can be best understood by noting that although they had been converted to Christianity and had been carrying on trade relations with the Byzantine Empire for some hundred years or more, they still had no written language of their own. In addition they retained their native Gothic tongue.²

When the Lombards entered the Italian peninsula they found the land rather sparsely populated, for Italy had been torn by civil and external wars for almost fifty years prior to their arrival. The native Italian population which remained was made up of two elements, although one of these was practically non-existent. The most important of the two elements was a population descended from the old Roman population of Italy; the other was the remnant of the Ostrogothic nation. The descendants of the old Roman population are referred to in a general sense as Romans, although

beginning with our approximate period one must be careful to understand his terminology, for the term Roman comes more and more to refer specifically to an inhabitant of the city of Rome or of the immediately surrounding territory, and not to any descendant of the former Roman citizens.³ This confusion in terminology will appear in the laws of the Lombards when the Lombards get around to recording them, and one must be careful not to include the former Roman population among those affected by the harsh measures which were enacted against the inhabitants of the city of Rome, one of the primary foes of the Lombard kingdom. The less important element in the population which the Lombards encountered in Italy was made up of the remnants of the Ostrogothic nation. The Ostrogoths had lived in Italy as a ruling population under their extremely able king, Theodoric, from about 490 until the death of Theodoric in 526. During that time Italy seems to have been relatively peaceful, and the Ostrogothic king did his best to smooth out the radical differences between his own barbarian followers and the more highly cultured Romans among whom they lived. Although things progressed fairly well while Theodoric lived, his death was the signal for all the latent hostility between Ostrogoth and Roman to break out. Furthermore, the Ostrogoths could not decide among themselves upon a peaceful succession to the Ostrogothic throne. While Italy was in this state, the Eastern Roman Empire under Justinian enjoyed a revival, and for almost twenty years the Byzantines fished in the troubled waters of Italy. During this period it was the Ostrogoths who bore the brunt of the Byzantine attack. The former Roman population seems to have stood aside and let the Byzantines and Ostrogoths fight it out between themselves. The Byzantines were prevented from immediately conquering the peninsula by their own

blundering, but they ultimately defeated the Ostrogoths, who were torn by internal dissension and who did not have the resources of the Byzantine Empire. The Ostrogoths were not only defeated as the result of their long struggle with the Byzantines, but they were also practically exterminated in the process. At any rate, if the Lombards encountered any Ostrogoths in the Italian peninsula, their number was negligible, and no mention of this people appears in either the Lombard Laws or in the history of the Lombards which was written by Paul the Deacon late in the eighth century.⁴

Thus the Lombards, a Germanic barbarian nation, entered Italy in the sixth century, attracted there by the warm climate of the peninsula, by the relative fertility of the region, and by the political chaos of the territory. They entered Italy not for plunder or temporary conquest, but to establish themselves there permanently. One of the major social and economic problems facing the Lombard king, therefore, was the problem of dividing the conquered land among his followers. The Lombards themselves were a people relatively few in numbers, so it would not have been to their advantage to dispossess the former population completely. We do not know exactly how this division of land took place, but there are certain vague references to "thirds" in the native Lombard historian Paul the Deacon⁵ and in the Lombard Laws, which make it fairly certain that the Lombards followed a system of "hospitality" whereby the land together with the agricultural workers who dwelt on that land was divided up into thirds.⁶ In the fifth century, an arrangement had been followed by the Burgundians whereby the Burgundians took two-thirds of the land and one-third of the agricultural workers, thus leaving to the former Roman host one-third of the land and two-thirds of the agricultural workers.⁷ When the Visigoths divided the territory of southern Gaul

and Spain, in the middle of the fifth century, they seem to have taken two-thirds of both the land and the agricultural workers.⁸ We have no way of determining just how many thirds of land and of agricultural workers were taken by the Lombard conqueror and how many were left to the former Roman lord. It is certain, however, that in spite of the Lombards' reputation for cruelty and the charges made by many early modern scholars that the Lombards wiped out entirely the former free Roman population,⁹ Lombards and Romans did continue to live side by side in more or less analogous economic conditions. Politically, yes, the Romans were always subordinate to the Lombards, but economically and socially there seems little reason to believe that the Romans were especially downtrodden.

This much we have, then: the Germanic Lombards have entered the Italian peninsula; they have conquered the northern part of the territory with very little trouble; they have by-passed the Duchy of Rome; and they have conquered the part of southern Italy which was to form part of those two famous Lombard duchies, Spoleto and Benevento. Our best source of information about the Lombards is a series of law codes compiled by various of their kings and promulgated for the benefit of their people. These laws but rarely deal directly with the subject of class distinctions among this barbarian people, but much is inferred there in the laws, and by a careful comparison of the provisions of many of the laws, one is able to discern some fairly certain facts.¹⁰

The Lombard nation as a whole constituted a ruling element in the Italian peninsula after their arrival there. Such a statement would suggest that the Lombards were a sort of ruling aristocracy. But the Lombards themselves were divided up into a number of social classes, some of which

were decidedly not aristocratic. In describing these social classes, we must bear in mind certain facts about the barbarians in general, and about the Lombards in particular. The first of these facts was the high esteem in which the occupation of warfare was held by this people and by the barbarians in general. The mark distinguishing the ordinary Lombard freeman from persons of servile or semi-servile birth was his army service. Every Lombard freeman is described as an *exercitalis*, the Latin word for soldier, or as an *arimannus*, the Lombard form of the Gothic *Heermann*, or army man.

But not every man who entered the Italian peninsula with the Lombards was such a freeman or *exercitalis*. The Lombards, like the other barbarians, had long taken advantage of the institution of slavery or something resembling semi-servile tenure in order to keep their fields cultivated and their crops harvested. These agricultural servants were usually war captives, and the obtaining of such workers did much to demonstrate the economic necessity of warfare to the barbarian peoples. The Lombard Laws will have much to say about these servile classes, and they will also have much to say about the several ranks which will appear among the freemen themselves. Since the laws are our best source of information about these class distinctions, it is to the laws themselves and their provisions regarding this problem that we shall next turn.

From the Lombard Laws it is clear that Lombard society fell into a number of classes, but it is hard to define each of these classes precisely. The laws suggest—and such an explanation is reasonable when one considers the political instability of the Lombard kingdom—that the constitution of the Lombard social structure was in a state of flux in the period between the issuance of the first laws by King Rothair

in 643 and those issued by King Liutprand and his immediate successors in the first half of the eighth century.¹¹ This state of flux is especially true with regard to the free classes.

One may with certainty say that Lombard society was divided into three main groups: the freemen, the *aldii* or semi-free men, and the slaves. But in addition to these three general divisions, it would seem that there were various subdivisions within each class, especially among the class of freemen and among the class of slaves. We shall consider each of these classes in the order just mentioned. We shall then consider the rather difficult question of personal lordship, which is beginning to modify these classes, especially that of the freemen, for this peculiarly medieval institution tended to supersede the older lines of class distinction.

The freemen. Any adult Lombard capable of bearing arms was considered a freeman and as such was able to participate actively in Lombard society: he answered the call to arms, he possessed a "wergeld," and he was fully competent at law. As already suggested, the close connection between the idea of army service and full citizenship is clear from the terms used frequently to denote a freeman, the Latin term *exercitalis* and the Lombard word *arimannus* both being used to denote an ordinary freeman liable for military service.¹²

Every free Lombard had a "wergeld" which represented his value or money worth. The payment of such a wergeld was required by his family if he were killed, or in certain other cases of serious physical injury or personal affront. The reasoning behind the payment of such a sum of money among the Lombards and among the barbarians in general was that it should placate the aggrieved family in order that a blood feud (*faida* in the Lombard Laws) might not arise.¹³

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The amount of the wergeld was established in accordance with the social and legal rank of the man concerned (*in angargathungi* was the Lombard expression for this idea of wergelds varying according to status).¹⁴ From the analogy of the other *leges barbarorum* where schedules of wergelds appear, it would be expected that the *Leges Langobardorum* would set up a definite range of wergelds as soon as the customary law was reduced to writing with any degree of completeness. The earliest issue of Lombard Laws, that of Rothair in 643, contained 388 titles, over twice as many laws as were issued by any other Lombard king. Considering the length and inclusive nature of Rothair's Edict, one would expect to find there a statement of these various wergelds of freemen. This is all the more to be expected when one considers that the Edict includes a very detailed schedule of tariffs¹⁵ to be applied in various kinds of physical injury short of death. But the schedule of wergelds proper is nowhere stated in Rothair.

We can still, however, get some idea of the varying values placed upon social rank in the seventh century in the time of King Rothair, less than a hundred years after the arrival of the Lombards in Italy, by a glance at the schedule of tariffs for injuries. The compensations provided are those for injuries that fall into three main categories: those inflicted upon *servi rustici* or agrarian slaves, those upon *servi ministeriales* or household slaves and *aldii*, and those inflicted upon freemen. Here in the case of the less serious physical injuries, the composition stated is the same for all freemen, regardless of any difference in social rank. But in the case of permanent injury—such as, for example, the loss of an arm, a leg, or a foot—a set composition is not mentioned, but instead it is stated that the composition is to be assessed at

some fraction of the man's wergeld, the exact fraction depending upon the severity of the injury. For example, the loss of a leg might require the payment of one-half a man's wergeld, the loss of an arm, one-third his wergeld, and so on.¹⁶ A man with a higher wergeld would thus automatically receive more for such an injury than would one with a lesser wergeld. Such provisions along with the absence of a definite statement of the freeman's wergeld in Rothair's Edict, would lead one to the conclusion that the wergeld of every freeman was not the same—instead it varied as a man was valued (*adpretiatus fuerit*). Such expressions as this last suggest the conclusion that the wergeld of the freeman was not fixed at this time in the seventh century but was decided upon each occasion in accordance with the "quality" of the person concerned.¹⁷

By the eighth century, the question of fixed wergelds for freemen received the royal lawgiver's attention. Here the basic law is Title 62 of the laws issued by Liutprand. This law leaves no doubt that there were different classes of freemen who had varying wergelds:

Anyone who has [deliberately] killed a freeman, shall lose his entire property; and he who has killed a man while defending himself shall make composition according to the quality of the person. Now moreover we take foresight to establish by what means that quality should be considered. For it is the custom (*consuetudo*) that a lesser person (*minima persona*) who is [yet] found to be a freeman (*exercitalis*) shall be compounded by one hundred fifty solidi, and he who is of the first class (*primus*) shall be compounded by three hundred solidi. Indeed concerning our *gasindii*, we wish that anyone who has killed the least of these (*minimissimus*) in such a manner, shall make a composition of two hundred solidi on account of the fact that he is seen to serve us; indeed it shall be greater according to the quality of the person as in our consideration or in that of our successors it ought to remain permanent in what manner that composition ought to ascend to three hundred solidi.

Here we have a very definite statement that there were several kinds of freemen among the Lombards, whose status was reflected in their varying wergelds. The difficulty remains to determine just what is meant by this distinction between the *minima persona* and the *primus homo* mentioned in the law. Our only clue to this difference comes from Liutprand 83 which establishes how many retainers the various royal officials might take into battle with them. In addition to a specified number of horsemen, each official is allowed a number of lesser men (*minores homines*) "of those who have neither houses nor land." Such would make it seem that the lowest class of freemen provided with a wergeld of one hundred fifty solidi, according to the terms of Liutprand 62, was a class of men who did not hold landed property of their own, but occupied the lands of others in the position of a tenant or dependent retainer. On the other hand, the "first class" (*primus*) must then refer to the landed classes. Moreover the fact that the lowest class of freemen—a class which does not possess land—is still referred to as an *exercitalis* would lead one to the conclusion that this landless freeman, even though we have no specific name for him among the Lombards, may be equated with the Anglo-Saxon *ceorl*, and like the Anglo-Saxon *ceorl*, was liable for military service.

Generally speaking, all adult free males in the Lombard kingdom were legally competent. In a few cases involving undivided property some sort of over-all power seems to have resided in the hands of the father of the house even though that man may have had sons and grandsons who were grown. Even in such cases, however, the property of the heirs is protected against alienation by this "house father."¹⁸ We may say, therefore, that the Lombard house father did not enjoy the right of legal protection and representation over all of his living descendants as did the Roman house father.

It is true that the Lombard did enjoy such rights over the women of his house, over his minor sons, and over his slaves and *aldii*. His own sons, however, became legally competent at the age of eighteen and thereafter were able to handle their own property.¹⁹ All free males within the Lombard kingdom above the age of eighteen, with the exception of a few incompetents, were able to handle their own property, and to sue and be sued before the judges of the land. They were further responsible for the giving and receiving of compositions in criminal and civil cases as well as able to offer oath for themselves or friends or to become sureties for the payment of some debt.

Free women were not legally competent under the Lombards. Instead a woman always had to be under the legal protection of some male.²⁰ In this respect the woman's position closely resembles that of women under the older Roman Law where the authority of the house father over his wife, children, etc., was complete. The Lombard right of protection over women was both a legal and a property right, the word used to express it in the laws being *mundium*.²¹ Ordinarily this *mundium* was in the power of the father until the marriage of the girl, at which time it might pass to her husband, but only if the prospective husband fulfilled the terms of the marriage contract, that is, only upon the full payment of the *meta* which had been set up in the agreement with the girl's father.²² Before this payment was made or if it was agreed that it would not be paid, the *mundium* of the wife did not pass to the husband but remained with the father or whoever possessed it.²³ If the father of the girl were dead, then her *mundium* passed to her brother, or in the absence of a brother, to some other guardian in accordance with the rules of inheritance, or lacking any suitable relatives, to the court of the king. If the

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possessor of the *mundium* were someone other than the father or brother (or later the husband), he is described as the *munduold*, and the girl is his ward or *frea*.²⁴

As a result of her lack of legal competence, a woman was not allowed to take part in judicial suits or to sell property without the consent of her husband and without the witness of her relatives or of the judge of the place.²⁵ Similarly, in the case of judicial suits it was ordinarily the relatives of the woman who were responsible for handling her suit.²⁶ Furthermore, a woman did not pay composition, but instead compositions for injuries caused by her were paid by the person to whom her *mundium* belonged, and compositions due her for injuries were ordinarily collected by her *munduold*.²⁷ A woman also did not have a wergeld, in a strict sense, since she was incapable of raising the *faida*;²⁸ however, in practice it was the same as for a male member of her social class.²⁹

The aldiu or persons of the semi-free class. The *aldiu* occupied a position somewhere between that of the freeman and that of the slave³⁰ and hence comparable to the *laet* of Kentish law and the *lidus* of Frankish law. The wergeld of the *aldiu*—if it may be said that the *aldiu* possessed a wergeld—was sixty solidi (Rothair 129) while the *pretium* or value of slaves varied from sixteen to fifty solidi depending upon the skill and training, the usual *pretium* of the slave being about twenty solidi.³¹ As we have noted above, the wergeld of freemen varied from one hundred fifty to three hundred solidi.³² This difference in "value" would indicate that the *aldiu* occupied a position somewhat above that of even the most valued slave, and still considerably below that of the lowest class of freemen. A further indication of this in-between position of the *aldu* is indicated by the fact that injuries to them were compounded for at a rate which

was usually a third or fourth of the composition set for a corresponding injury to a freeman, while the composition set for injuries to *servi rusticani* or agrarian slaves (the lowest class of slaves) was usually half of the composition set for the corresponding injury to *aldii*.³³

The *aldii* in the Lombard Kingdom occupied a social and economic status which is but ill-defined. As far as their legal competence is concerned, they seem to be halfway between the slave on the one hand and the freeman on the other. In some of their characteristics (in, for instance, the fact that they might marry free women³⁴), they seem closer to the free in status than to the slave, but in other respects, for instance their inability to enter into contracts,³⁵ their position seems to have been closer to that of the slave.

In a legal sense, the position of the *aldius* in relation to his lord was sometimes equated with that of the slave, and at other times, it seems to have been more like that of a client to his *patronus*; that is, it was something like a guardian-ward relationship. And again, in some cases, the position of the *aldius* seems the same as that of the freedman, and there are specific laws for the raising of a slave to the position of an *aldius*.³⁶ So it may further be that the *aldius* is a slave who has been partially emancipated—he remains personally free but under the tutelage of his former lord and in direct servitude to him still.

The *aldius* was not legally competent, that is, he could not enter into transactions in his own name, and he might not give and receive compositions in the case of offenses involving the payment of composition, although, as in some instances in the case of women, the *aldius* might be allowed to receive the composition. Here the type of offense involving such a payment is usually that reflecting upon one's per-

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sonal honor, as in the case where someone violently commits adultery with the wife of an *al dius*.

The patron of the *al dii*, although occasionally referred to as *patronus*, is usually called *dominus* or lord. This lord was legally responsible for his *al dii*,³⁷ and, as a matter of fact, a man's *al dii* were classed among his dependents and were legally not distinguishable from the women of his household or his minor heirs. The lord represented the *al dius* in legal suits; to him was paid composition for injury to the *al dius*; and compositions incurred by the *al dius* were paid by him.³⁸

Since the position of the *al dii* is taken for granted in the Laws, it is difficult to infer more about their social position than that which has just been said. The Laws make no mention of their depressed condition, that they owed agrarian services, or that they were bound to the land, although such conclusions are almost inevitable when it is considered that a manorial system was established in the Italy of the Lombards, and only the *al dii* fulfill the conditions of necessary dependent agricultural workers. That this class contained all the former Roman population of the peninsula—as argued by a number of important nineteenth century scholars—seems insupportable from the evidence of the Laws.³⁹

The slaves. The Lombard slaves were equivalent to the Roman *servi*. There seem, however, to have been several classes of slaves among this people. The most well-defined classes are those described as *servi ministeriales* and those described as *servi rustici*. The *servi ministeriales* or household slaves are defined in the Laws as those "who have been taught, nourished, and trained (*probat*) in the home." The composition for injuries inflicted on them is the same as that for injuries to *al dii*, but their *pretium* or value is not the same. The wergeld of the *al dius* is sixty solidi, while the

pretium of the household slave is fifty *solidi* in the case of one who has been fully trained and twenty-five *solidi* in the case of one who is subordinate to such a fully trained slave.⁴⁰ As far as compositions for the *servi rustici* are concerned, all types of agrarian slaves are provided for in the same schedule of tariffs; that is, the same composition applies to all of them whether they are *massarii*, the highest type of agrarian slave who dwells in his own hut, or the lowest type of herder. The compositions for injuries to this class are the lowest ones provided in the Lombard Laws.⁴¹ The *pretia* or legal value of these slaves differ in the following manner: the *servus massarius* or the slave who occupied some sort of servile holding with a house on it, was valued at twenty *solidi*.⁴² The *bovulus* or ox plowman was also valued at twenty *solidi*.⁴³ The *servus rusticus* who was subordinate to the *massarius* was valued at sixteen *solidi*.⁴⁴ The "master" swineherd who had two or three or more "apprentices" was valued at fifty *solidi*; a less important swineherd at twenty-five *solidi*.⁴⁵ The "master" cattleherd, goatherd, or oxherd was valued at twenty *solidi*, one of his "apprentices" at sixteen *solidi*.⁴⁶ It is only in the descriptive names of these slaves that we have any indication of the type of work they were called upon to do. But it is clear that slaves generally belonged to certain classifications and their duties were determined accordingly. In other words, there is considerable differentiation of labor among the slave population of the Lombards.

Although slaves were prohibited from taking free women to wife, a man might marry his own maidservant but only on the condition that he free her first, that is, that he make her *vurdibora* by the procedure of *gairethinx*.⁴⁷ If a freeman had children by the maidservant of another, then the father might purchase these children from the lord of their mother

and manumit them by the formal procedure of *gairethinx*, whereupon the children would enjoy the position of freemen. However, if the father did not purchase such children, they remained the slaves of their mother's lord.⁴⁸

As would be expected, slaves were not legally competent among the Lombards. Legally, the lord was responsible for his slave.⁴⁹ This meant that the lord not only had to pay composition for the illegal acts committed by his slave, but he also received composition for the injuries done to him.⁵⁰ Furthermore, slaves were not allowed to enter into commercial negotiations concerning the property of their lord—since legally they could have no property of their own—without the express consent of their lord.⁵¹

The subject of slavery brings us to the related question of emancipation or manumission as it was known in the Roman and barbarian laws. The subject of manumission in the Lombard Laws reveals a most curious mixture of Roman and Germanic elements. Since this question of emancipation reveals the general attitude of the ruling class toward their slave population, we will note the essential features of this process here.

In Rothair's Edict it is stated that there are four kinds of manumission or emancipation, and these four kinds of manumission are defined.⁵² Later laws on this subject do not change this basic provision—they are simply modifications and clarification of it.⁵³ We will first note what the four kinds of manumission were, and then explain each of them.

Manumission for the slave of his Lombard master did not always bring with it complete freedom. It is true that the Lombard lord could give complete freedom to his slave if he so desired. According to the Edict, the slave would then become *fulcfree*, *amund* (*haamund*), and *extraneus*. This meant that he was "folk-free" and *a-mundius*, that is, that he

was not under the *mundium* or protection of any person. Finally, that he was *extraneus* meant that he was no longer a member of the family of his former lord—he had become *extraneus*, a stranger, to the family.⁵⁴

The master or lord, however, might not choose to give his slave such complete freedom. He might make him *in pans*, which seems to have meant that he became *fulcfree* without becoming *amundius*, for he remained in the *mundium*, the legal protection, of his former master. In such a case, the former slave presumably did not become *extraneus*, a stranger to his lord, although the law does not make this statement explicitly.⁵⁵

A third type of manumission is that which made the slave *fulcfree* and *amundius*, but which did not make him *extraneus*, in other words, the former slave, now completely free, still remained a member of his former lord's family.⁵⁶

Under still another type of manumission, the lord might raise his slave to the status of an *aldius*.⁵⁷ In such a case, he presumably is made neither *fulcfree*, *amundius*, nor *extraneus*. Unfortunately there is little said about this type of manumission which might throw some light upon the actual status of the presumably abundant class of *aldii*.

In connection with the first type of manumission mentioned here, it seems to have been necessary that the master wishing to free his slave in this complete manner should first make a formal transfer of the slave to another man, a procedure known as "by *gairethinx*." This is usually explained as a gift confirmed by an assembly (*thing*) attended by those bearing spears (*gaire*) who flourish them to show their approval of a specific act. Whether such a spear-assembly survived in the Lombard period is not at all clear from the Laws, but the expression, "to confirm by *gaire-thinx*," remained. We are at least safe in saying that it was

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some kind of a witnessed gift or alienation.⁵⁸ The second party to whom the slave had been transferred would then take the slave in question and by the same formal method of transfer, give him into the hand of a third party, and the third party in the same manner would hand him over to a fourth party. This fourth man would take the slave to a place where four roads meet and give him his freedom with "*gaida et gisil*," with oath-taker and witness, and make some kind of a formal statement to the effect that the slave now had the right to choose which of the four roads he might wish. A slave given this type of freedom became *fulcfree* or folk-free,⁵⁹ estranged from his former master (*extraneus*) and *a-mundius*, that is, no longer under his former lord's protection or *mundium*. Such a complete freedom allowed the former slave to go where he wished and cut all connections with the family of his former lord. Consequently, upon the former slave's death without heirs, it was the court of the king and not his patron or the heirs of his patron, who succeeded to his property.⁶⁰

In the second type of manumission, the slave became *fulcfree* without becoming *amundius*, that is, although personally free, he still remained under the *mundium* of his former lord, and in such a case, his relationship with his lord was much the same as that of ward to guardian for he remained under the legal representation of his lord. For this type of manumission, which is described as becoming *in pans*, the slave did however become completely free as far as his own personal life was concerned, at least as free as, say, a free woman would be. Instead of being passed through the four hands and being given the choice of the four roads, this type of manumission seems to have been accomplished by handing the slave over to the hand of the king.⁶¹

By the third type of manumission, the slave went through

the formal type of emancipation described in the first case and was consequently made *fulcfree* and *amundius*, but by some means or another, he did not become *extraneus*. His legal position toward his former lord is described as that of a related free Lombard: that is, if he does not leave legitimate sons or daughters who are *fulcfree*, then the patron may succeed him just as if they had been near relatives. Other than this stipulation, however, the third type of manumission did not differ from the first.⁶²

By the last type of manumission, which is not described, the lord can raise his slave to the position of an *aldius*, and this partially emancipated slave then enjoyed the same legal position as the other *aldii*.⁶³

The types of manumission which have been discussed above were the result of a voluntary manumission by the lord. It was possible, however, that manumission take place without the consent of the lord. Liutprand 140 provides for the case where the lord commits adultery with the wife of his slave or *aldius*. Here he is to lose the slave or *aldius* and his wife also, and they are to become *fulcfree* as if their manumission had been given to them by the formal ceremony of the *gairethinx*. In order that such a ceremony can actually take place and so that the manumission will become legal, the man and woman are to present themselves before the prince of the land and he will give them their freedom and set down the terms of their freedom in a charter. Slaves or *aldii* manumitted in such a fashion could thereby become completely free even without the consent of their former lord.

II

So much for the specific classes into which society in the Lombard kingdom was divided. Let us now turn to the

fascinating question of personal lordship with all that this expression implies regarding the relationship between a lord and his vassal.

In the study of all medieval kingdoms, one is inevitably brought up against this elusive problem associated with the origins of feudalism. The layman often automatically associates feudalism with the Middle Ages, and yet most of us would be totally unable to account for the way in which this institution or body of institutions developed out of the amalgamation of Roman and Germanic elements. It is clear that although Roman organization had begun to break down by the fifth century, strictly feudal conditions had not yet appeared. It is equally clear that by the ninth century feudalism had penetrated into almost all parts of western Europe, with the possible exception of England. Some time in between the fifth and the ninth centuries one should be able to find the origins of feudalism, and these origins will be in the barbarian kingdoms which arose as the Roman Empire in the West gradually fell apart. The Lombard Kingdom is one of those barbarian kingdoms which were in existence as feudal conditions gradually evolved, so we would expect to find some institutions here which are either feudal or pre-feudal. Before we consider this problem, we might note just what definition of feudalism is accepted here.

Feudalism is usually defined as a peculiar combination of fief holding and vassalage. Fief holding is the holding of a piece of land or office in return for certain agreed services rendered by the vassal or fief holder to the lord. Vassalage is an honorable relationship between the lord on the one hand and his "man" or vassal on the other, the arrangement being cemented by an oath of loyalty and both parties being social equals.

A discussion of the problem of the origins of feudalism in Italy is much too difficult to be treated in detail here, but it would be interesting to note just how this question of lord-vassal relationship has already become recognized in the Lombard Laws which were published in the seventh and eighth centuries.

Even in Rothair's Edict where there is no specific mention of differences in the wergelds of freemen, the fact that not all freemen enjoyed the same status may be inferred from several of the laws. One of these, Title 13, states simply that if anyone kills his lord, he is to be killed. Such a statement could refer to one of free or of unfree status, but the provisions for enforcing this sentence would indicate that it is aimed at a freeman: "If anyone has tried to defend this murderer who has killed his lord, let him be liable to pay nine hundred solidi, half to the king and half to the relatives of the dead man. And those who refused aid in avenging the injury of the dead man, if indeed their aid was sought, let each of them compound fifty solidi, half to the king and half to him to whom they denied aid." Defense of a slave, even though a murderer, would hardly bring a composition of nine hundred solidi, which is that imposed for an unjustified breach of the public order.⁶⁴ Furthermore, if the murderer were a slave, it would hardly be necessary to enlist the aid of freemen in avenging the injury to the dead man. From this law it would follow then that the lord-freeman relationship existed as early as the time of Rothair in the middle of the seventh century, but the Code does not elucidate the matter further. Perhaps this relationship may even date back to the *comitatus* of the Germanic prehistoric period.

That royal officials enjoyed a rather special position in their relationship to the king and to other freemen is indi-

cated by two other laws from Rothair's Edict. According to Title 374, if anyone kills the *sculdahis*⁶⁵ or agent of the king while that individual is employed on the king's business, composition is to be made to his relatives as in the case of any other freeman, but in addition, a composition of eighty solidi is to be paid to the king. The offense mentioned here, of course, is manslaughter rather than murder since only the wergeld composition has been imposed and no extra compensation is made to the state for the breach of the peace, but even in such a case of presumably justifiable homicide, the fact that it is against one of the king's officials made the perpetrator liable to a considerably higher penalty than in such a case involving an ordinary freeman.

The laws of Rothair leave us very uncertain as to the exact nature of the relationship between the king on the one hand, and the judges of the nation and his royal officials on the other. In the later laws issued by Liutprand, Ratchis, and Aistulf, however, the matter becomes more definite, and we have terms introduced which seemingly must refer to special kinds of freemen in their relationship to other individuals or to the king. These men are those termed *fideles* or *gasindii* in the laws. We are able to learn a little about these persons from the prologues to the laws of Liutprand. The laws of Liutprand were not issued all together in one year but were promulgated in fifteen different issues in the years between 713 and 735. Each of these issues is preceded by a prologue of varying length which indicates that the king is issuing these laws with the advice of his councillors. The initial prologue is the longest, and for our purpose we may take it as typical of the rest. Here Liutprand notes that he is issuing these laws "together with all the judges from the divisions of Austria as well as of Neustria, and even from the boundaries of Tuscany, as well as with my re-

maining Lombard *fideles*, and with the rest of the people attending." He issues the laws with, as he says, his "common council (*commune consilio*)."¹ We may be reasonably sure that the judges mentioned here are the highest royal officials, but that leaves the problem of who the *fideles* were. That they constituted what was essentially a Lombard nobility, or rather, a class of royal vassals, may be deduced from a comparison of this statement with that made in the prologue to the issue from the eighth year of Liutprand's reign. Here Liutprand states that he is issuing his laws "together with my most illustrious nobles (*obtimatibus*) from the bounds of Neustria, Austria, and of Tuscany, and with the rest of the Lombard nobles (*nobilibus*) . . . with all the people assisting." It would appear here that the term "nobles" (*obtimates*, *nobiles*) is used interchangeably with *iudices* and *fideles*. If our deduction is correct, then, the *iudices* and the *fideles* constitute the noble class of the realm. Presumably they are bound by an oath of loyalty to the king if we may trust the connotation of the term *fidelis*.

Our discussion up to this point leaves the question of the other royal officials and the *gasindii*. Are they also a part of this "nobility"? The word *gasindius* first appears in Title 62 of Liutprand's Laws. This is the law already discussed which establishes at one hundred fifty solidi the wergeld of a freeman (*exercitalis*) described as a *minima persona*, and the wergeld of a *primus* at two hundred. The law concludes: "Indeed concerning our *gasindii*, we wish that anyone who has killed the least of these (*minimissimus*) in such a manner, shall pay two hundred solidi in composition on account of the fact that he is seen to serve us; indeed [this amount] shall be greater according to the quality of the person as in our consideration or in that of our successors it

has been established in what manner that composition ought to ascend to three hundred solidi." Just who the *gasindii* were is never mentioned in the Laws but it does not seem too much to presume that, at least as far as the king was concerned, his *gasindii* were also *fideles*, that is, they had entered into some special kind of relationship with the king, probably based on an oath of loyalty: the same relationship as that which had existed for so long between the Germanic leader and his body of personal followers, the *comitatus*.

By the time of Liutprand, and perhaps even considerably earlier, the king is not the only one to have such personal followers or *gasindii*. At any rate, the special relationship between lord and man was evidently complicating the administration of justice in the Lombard Kingdom since there are no provisions in the code for various types of freemen—all are provided for in the same terms. In other words, there is no distinction between the lord and his vassal as far as the Laws are concerned. In the case of the followers (*gasindii*) of the more powerful lords, it had evidently come to the attention of the king that these men were appealing to their lords for justice rather than to the king's representative, the *iudex*. It would appear that here there is a tendency for private courts to replace the royal courts. Such at least would seem a reasonable interpretation of Ratchis 10 and 11, although admittedly these laws are very obscure. Ratchis 10 seems to say that there are men in the realm who refuse the jurisdiction of their *iudex* and instead rely on the *patrocinium* or legal protection of another, and that furthermore, they seek to encourage other men to do the same thing. Part of the reason for this state of affairs was, as the law says, due to the fact that not all judges were devoting enough time to their judicial duties because they were more concerned with their own affairs, and with the affairs of their

relatives and of their own *gasindii*. Here there seems to be a double indication of the lord-man relationship. In the first place, the *arimannus* as he is called here, does not feel that he is getting adequate protection from the judge and so confides in the *patrocinium* of another, which must mean that he is accepting the lordship of some more powerful man. Then in the second place, it would seem that the judge has his own personal followers or *gasindii* for whom he has become responsible.

Such is all that can be gleaned from the laws directly on the subject of lordship. A consideration of the question of land tenure, however, may throw a little more light upon the problem. When the Lombards entered Italy, it was admittedly to get land, for they had allowed the lands which they had formerly occupied to pass to the Avars. What system of land distribution in Italy was originally followed by the Lombards is not indicated in the *Leges*, but there are a few references to the present distribution of land which seem to support the following conclusions. In addition to those lands which were held in private ownership, there were still some lands which belonged to the crown. These lands were administered by the king's officials, the *gastaldii* and the *actores*. These officials were responsible for such lands and made grants of them to individuals at the command of the king. This power must have been abused, however, for there is a very minute law (Liutprand 59) which forbids such officials to make grants on their own authority—a pretty sure indication that they were doing it.

Arguing from the analogy of the other Germanic kingdoms, it does not seem too much to say that when the Lombards first entered Italy, they probably distributed the land as they conquered it to the freemen who participated in the conquest, although the exact nature of this distribu-

tion is a very much controverted point. This distribution of land included a distribution of the people who had been working the land under their former masters. In other words, the Lombard conquest probably had little effect upon the manorial population of the land aside from the fact that for their former Ostrogothic or Roman lord, a Lombard was now substituted. This manorial population, which probably constituted the bulk of the *servi* and *aldii* of the Lombard kingdom, must have held land from their Lombard lord on the basis of some kind of servile tenure. Such at least would seem to follow from the vague references made in the laws concerning physical injuries to various types of unfree men. But this problem of the agrarian population and their kind of land tenure does not concern us here. The question here is whether or not freemen also held land of other men—that is, whether a freeman had a lord as the result of holding land from him.

That some freemen did hold land of other freemen on terms which did not necessitate the vassal's oath of loyalty to his lord seems clear from Liutprand 92. Here provisions are made concerning persons who hold land by "book" or by charter. If a man is a vassal and holds land from his lord in return for an oath of loyalty, the nature of the relationship between the two men is strictly honorable and they are social equals. Such is not necessarily true in the case of holding land by book or charter. Ordinarily only small amounts of land would be granted by book, and they would be granted to the man who was actually going to work the land. Hence the man who holds by book, although a freeman, is quite likely much lower in the social and economic scale than his lord, and they are not necessarily social equals.⁶⁶

In summary we might say that the manorial system in-

herited from the late Empire was still in effect among the Lombards and furnished the chief means for the actual working of the land. However, the existence of servile tenures among the Lombards did not preclude the possibility that freemen also might be directly associated with the land and might hold land from their lords in return for a fixed rent. Our conclusion is that both free and unfree persons might hold land by what we may call manorial tenure.

On the other side of the economic picture were the large landlords who held their land by virtue of their participation in the original Lombard conquest of the region or as the result of a subsequent gift made to them either by the king or by one of the king's officials. It is difficult to find a suitable word to describe this kind of tenure. It is not feudal tenure, for these lands or estates are not held in return for any stipulated service, although the holder might incidentally render some kind of service to the king, such as being one of the king's officials. In other words, the estates held by the noble class among the Lombards were held as benefices rather than as fiefs. Hence the *gasindius* or *fidelis* of the king (or of some other noble) might hold an extensive estate consisting of a number of manors and containing a large number of both free and unfree agricultural workers, and yet not hold by a strictly feudal tenure. That was to come later when the Franks had taken over and gradually substituted a nobility which was willing to take an oath of loyalty to their Frankish lord on terms which were more strictly feudal.

Feudalism, strictly defined, probably did not exist in the Lombard kingdom. However, a situation did exist there which had many features in common with feudalism. Perhaps the institutional position of Italy before the Frankish conquest might be compared with the position of England

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before the Norman conquest. The Lombards knew the institutions of vassalage and dependent land tenure before the Franks introduced feudalism proper in much the same way that the Anglo-Saxons knew a lord-thegn relationship before the Normans introduced more strictly feudal institutions. The question is primarily one of definition, but it must probably be admitted that the combination of vassalage with fief holding in return for honorary (usually military) service, was a contribution of the Franks to history, and from their kingdom in Gaul, this true feudalism spread to Italy and to most other parts of western Europe.⁶⁷

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NOTES

1. Historical references to the Lombards before they entered Italy are few. We hear of them in the first and second centuries after Christ in the writings of Velleius Paterculus and Strabo, and in those of Tacitus and Ptolemy. These Latin and Greek writers do not agree on the exact location of the Lombard nation during these centuries but generally they indicate the region of the Bardengau on the left bank of the lower Elbe. After these brief contacts with the Roman Empire in the first and second centuries, the Lombards disappear from history for three hundred years. At the close of the fifth century, the Byzantine historian, Procopius, locates them in Pannonia and Noricum. From this time on their movements can be followed in considerable detail from the work of Procopius and later from the work of the Lombard historian, Paul the Deacon. For a consideration of the origin of the Lombards, see the monographs by F. Bluhme, *Die Gens Langobardorum und ihre Herkunft* (Bonn, 1868), and Ludwig Schmidt, *Aelteste Geschichte der Langobarden* (Leipsic, 1884). Our major sources for the history of the Lombards after they entered Italy are two histories written during the later days of the Lombard kingdom and the laws issued by the Lombard kings. The histories are the relatively unimportant and anonymous *Origo Gentis Langobardorum* (ed. by G. Waitz in *Monumenta Germaniae Historica, Scriptores Rerum Langobardicarum et Italicarum Saec. VI-IX*, Hanover, 1878), and Paul the Deacon's *History of the Lombards* (*Pauli Historia Langobardorum*) edited in the same volume. For the history of the Lombards just prior to their arrival in Italy, the Byzantine historian Procopius is the

main source. Both Paul the Deacon and Procopius are available in English translation. H. B. Dewing, *Procopius, with an English Translation* (London, 1919); and William Dudley Foulke, *History of the Langobards by Paul the Deacon, University of Pennsylvania Translations and Reprints Series* (New York, 1907).

2. The only surviving remnants of the Lombard language are the few Lombard words used in the *Leges Langobardorum*, the Lombard names which appear in the anonymous *Origo Gentis Langobardorum* and in the *History* of Paul the Deacon, and the very occasional Lombard term which appears in the charters surviving from the Lombard period. However, even upon this slender evidence, philologists have developed a theoretical Lombard language and grammar, building upon the fact that Lombard survivals indicate an excellent example of Grimm's law of consonant changes. For this Lombard language, see W. Bruckner, *Die Sprache der Langobarden* (Strassburg, 1895) and Carl Meyer, *Sprache und Sprachdenkmäler der Langobarden* (Paderborn, 1877). A later work, attempting to apply the laws of statistics to remnants of the Lombard language is Robert L. Politzer, *A Study of the Language of Eighth Century Lombardic Documents* (New York, 1949).
3. It has been argued that the Roman history of Italy really ends in 568 with the invasion of the Lombards, and it is from that time that Italian medieval history begins. In other words, after the Lombard conquest, the term "Roman" as used with reference to Italy has only a geographical significance and refers to the people and institutions of the Duchy of Rome. Not even in the parts of the peninsula under the control of the Eastern Roman Empire does the appellation "Roman" really fit. Cf. Gino Capponi, "Sulla Dominazione dei Longobardi in Italia," *Archivio Storico Italiano, Appendice* (Firenze, 1842-44), Vol. I.
4. The political history of Lombard Italy can be followed most accurately in L. M. Hartmann, *Geschichte Italiens im Mittelalter* (Gotha, 1897-1911), 4 v. In addition, the following are helpful: J. B. Bury, *A History of the Later Roman Empire from Arcadius to Irene (395 A.D. to 800 A.D.)* (London, 1889), 2 v.; Gino Capponi, *op. cit.*; L. M. Hartmann, "Italy Under the Lombards," *Cambridge Medieval History* (Cambridge, 1926), II; T. Hodgkin, *Italy and Her Invaders* (Oxford, 1896), Vols. III-VI.
5. "In these days many of the noble Romans were killed for love of gain, and the remainder were divided among their 'guests' and made tributaries, that they should pay the third part of their products to the Langobards." Paul the Deacon, *History of the Langobards*, Bk. II, Chap. 23. Whether or not this expression refers to a third of the land or a third of the products is still

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a very controversial point among scholars but will not be considered here.

6. The institution of "hospitality" dates back to the time of the Late Empire when soldiers were quartered on the land, the soldier becoming the "guest" of the owner who was described as the "host." Later when the barbarians were admitted into the Empire in the status of *foederati*, these barbarians were also established on the land by a system of hospitality whereby the barbarians were usually allowed one-third of the property of the original owner. In this way, the barbarian became the "guest" of the Roman "host."
7. *Lex Gundobada*, LIV.
8. *Lex Visigothorum*, X, 1, 8.
9. See note 39 below.
10. The following statements are based on a translation of the Lombard Laws made by the author of this paper. The text used for the laws is that edited by F. Bluhme in the *Monumenta Germaniae Historica, Leges*, IV (Hanover, 1869).
11. The *Leges Langobardorum* were issued by several Lombard kings beginning in the seventh century and continuing through the middle of the eighth century. In addition to the laws issued by the Lombard kings themselves, there are a number of related laws issued by the Lombard dukes of Spoleto and Benevento which go through the ninth century. These latter laws were never applied throughout the Lombard domains, they have not been translated in entirety by the author and they do not influence the presentation of conditions in the Lombard Kingdom as presented in this paper. For the sake of reference, we might note the laws which are included in the following discussion: Rothair's Edict issued in 643 A.D. consisting of 388 titles; Grimwald's laws issued in 668 consisting of 9 laws; Liutprand's laws issued between 717 and 735 consisting of 153 laws; Ratchis' laws issued in 746 consisting of 14 titles; the laws of Aistulf issued in 750 and 755 consisting of 22 titles; and the presumably spurious law of King Desiderius issued perhaps in 757.
12. Rothair 20, 23, 24, 373; Liutprand 62.
13. That the Lombards were not far removed from a state of civilization, or lack of civilization, relying upon the bloodfeud or *faida* is quite evident from the *Leges*. Presumably, by the time the *Leges* were issued by the Lombard kings in the seventh and eighth centuries, the *faida* is no longer practiced, but the fact that its prohibition has to be repeated a number of times leads one to suspect that it was still quite common for these people to take justice into their own hands. The fact that cer-

tain minor offenses were to be compounded with a payment of some sort had long been accepted, and a system of tariffs for various types of injuries was well formulated. In such cases, it seems likely that the *faida* rarely arose. However, in certain more serious offenses, such as that of murder, arson, rape, or treason, the question was much more serious and it would presumably take a payment of considerable size to allay the wounded feelings of the injured family. By the period of the *Leges*, a composition has been established even for these serious offenses, but the composition set is so high that it would certainly need a considerable amount of police power on the part of the state to exact it, and if this were lacking, the family no doubt did not hesitate to resort to the old method of taking revenge.

14. Rothair 14.

15. Rothair 41-125.

16. For example, Rothair's Edict cites the following payments for the cited injury: gouging out of an eye, $\frac{1}{2}$ wergeld (Rothair 48); cutting off of a nose, $\frac{1}{2}$ wergeld (Rothair 49); cutting off an ear, $\frac{1}{4}$ wergeld (Rothair 53); cutting off of a hand, $\frac{1}{2}$ wergeld (Rothair 62); cutting off of a foot, $\frac{1}{2}$ wergeld (Rothair 68); etc.

17. The failure on the part of Rothair to include a statement of the varying wergelds of freemen can probably be accounted for by the fact that the value of such wergelds was fixed according to customary law and the royal lawgiver probably felt under little compulsion to include matters so well known to all. By the time of Liutprand, the appearance of new kinds of freemen by the creation of special kinds of royal officials and followers probably necessitated the fixing of new wergeld limits.

18. Rothair 153-171.

19. Liutprand 19.

20. Rothair 204.

21. The term *mundium* seems to be derived from the word for "hand," the symbol of power. The Old High German root was *Munt*, Latinized as *mundium*. The word and the idea conveyed seem to be the same as the Latin *manus*. At any rate, the term expresses the power of the housefather over the members of his household. All of the dependent members of the household—women, minor sons, slaves, *aldii*—were not recognized as persons at law and their interests were always represented by the father, husband, or lord. Since these legally incompetent persons were not persons at law, their status approximated that of property, and the right to represent them was passed down according to the rules of inheritance in the male members of the family.

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22. Rothair 178-200.
23. Rothair 215.
24. Rothair 215, Liutprand 120.
25. Liutprand 22, 29.
26. Rothair 202.
27. Liutprand 146; but note the exception in Liutprand 31.
28. Liutprand 13.
29. Grimwald 7.
30. Carlo Calisse, *A History of Italian Law, The Continental Legal History Series*, VIII (Boston, 1928), 73-74.
31. Rothair 130-136.
32. Liutprand 62.
33. Rothair 41-125.
34. Rothair 216.
35. Rothair 235, Liutprand 87.
36. Rothair 224 (IIII).
37. Liutprand 68, 97.
38. Rothair 208, 258, 376, Liutprand 124.
39. That the Roman population was so completely reduced was an idea put forth by Carlo Troya in his *Codice Diplomatico Longobardo* (Naples, 1845). It is accepted by T. Hodgkin, *Italy and Her Invaders* (Oxford, 1896), VI, 586-92, and by L. M. Hartmann, *Geschichte Italiens im Mittelalter* (Gotha, 1900), II, Bk. II, 2-8. However Gino Capponi in the article cited above, pp. 209-213 and 217-222, argues that for at least a portion of the Roman population—those of the lower class and *coloni*—although their position legally was no better under the Lombards and even perhaps a little worse—still in an economic sense, the Lombard conquest was an alleviation of their burdens, for since the Lombards had no system of regular taxation to furnish a source of income for the maintenance of the central government, such classes were relieved of the heavy taxes of the late Roman and Ostrogothic periods. Capponi goes on to state that not only did the Lombards not treat the Romans in the severe fashion usually accepted, but they also had a considerable amount of appreciation for Roman accomplishments. The author of this paper feels that the arguments of Capponi can be carried even further in the direction of destroying the myth about the reduction of the Romans to the status of serfs under the Lombards. Such a position, however, is based primarily upon inferences from the Laws and is too detailed a topic to be gone into here.
40. Rothair 130, 131.
41. Rothair 103-137.
42. Rothair 132.

43. Rothair 133.
44. Rothair 134.
45. Rothair 135.
46. Rothair 136.
47. Rothair 222. The meaning of *gairethinx* is more logically explained below in connection with manumission.
48. Rothair 156.
49. Liutprand 97.
50. Rothair 105, 142, 376; Grimwald 7; Liutprand 124.
51. Liutprand 87.
52. Rothair 224.
53. Liutprand 23, 55; Aistulf 11.
54. Rothair 224 (I).
55. Rothair 224 (II).
56. Rothair 224 (III).
57. Rothair 224 (IIII).
58. This same formal procedure was followed also in making gifts or wills. It would seem that the procedure goes back to a pre-historic time because its very name, *gairethinx* ("spear assembly"), is reminiscent of a time when the tribal assembly met and before this assembly was transacted all judicial and contractual proceedings. The problem of whether or not the Lombards still held tribal assemblies after they entered Italy has never been solved, but it is most unlikely that they did because of the fact that the population of the nation was widely scattered in settlement. This, of course, would not make it impossible for regional assemblies to be held, and possibly such regional assemblies did meet at stated times during the year. However, the contractual arrangement which at one time was valid only when made before the spear-assembly of the nation, was by the time of the Lombard Edict valid when made according to a set form in the presence of several free witnesses. The idea of publicity is the important element in the act, however, for it is continually stressed that a man can hope to substantiate any claim he may make only if he can produce witnesses to the act. Cf. Carlo Calisse, *op. cit.*, pp. 502-503, and T. Hodgkin, *op. cit.*, VI, 194-96.
59. "Folkfree," i.e., he enjoyed the traditional freedom of the folk or nation.
60. Rothair 224 (I).
61. Rothair 224 (II).
62. Rothair 224 (III).
63. Rothair 224 (IIII).
64. The laws involving the offense of breach of the peace in the Lombard Laws are those involving the crime known technically as

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scandalum. This offense seems to have included something of the notion of treason toward the king or state. At any rate, certain places—the palace of the king, any city where the king was present, and even the churches—seem to have enjoyed a special royal protection or peace. Breach of the peace in any of these places and in a few others was regarded as a slight on the authority of the state and consequently involved an extremely high composition. See Titles 8 and 35-40 of Rothair's Edict. Cf. the notion of the king's highway in England.

65. The *sculdahis* was an extremely important local representative of the king, his position corresponding somewhat to that of the sheriff in England.
66. Such is approximately the same situation as that which existed in Anglo-Saxon England where land held by "book" was land held by a special charter, whereas land held by folk law was that land which was secured originally by the law of the folk, that is, by some distribution long in the past, when no special charter was necessary.
67. I should like to express my appreciation to Professors Floyd S. Lear and Carroll Camden for reading this manuscript and for offering a number of valuable suggestions.